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**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 27th day of August, 2002

JOINT APPLICATION OF ALOHA AIRLINES, INC.,

And

HAWAIIAN AIRLINES, INC.,

under Section 116 of the Aviation and Transportation
Security Act of 2001 for Approval of and
Antitrust Exemption for Agreement

Docket OST-
2002-13002 - 5

ORDER EXTENDING COMMENT PERIOD

Aloha Airlines and Hawaiian Airlines filed an application for approval and antitrust immunity for an agreement whereby the two airlines would coordinate capacity on five major routes within Hawaii. They applied under section 116 of the Aviation and Transportation Security Act of 2001, P.L. No. 107-71, 115 Stat. 624 (November 19, 2001), which authorizes the Secretary, notwithstanding the provisions of 49 U.S.C. 41309(a), to approve and grant antitrust immunity to an agreement governing air transportation within a single state, if the Governor of the state has issued a declaration that the agreement is necessary to ensure the continuing availability of such air transportation within the state. The Governor of Hawaii has made such a declaration.

The two airlines filed their application on July 31. Our August 13 notice stated that the application was substantially complete and made comments due August 28. We provided a fifteen-day comment period, because the statute requires that any decision approving and granting antitrust immunity be made by October 1, 2002.

On August 22 Pacific Wings Airlines, a commuter airline serving markets within Hawaii, including a few served by Aloha and Hawaiian, moved for more time for filing comments. It asked that we make September 10 the due date. Pacific Wings alleges that the applicants did not serve it with a copy of their application, even though they served a number of other airlines, that it did not immediately learn of the filing of the application nor of our notice setting August 28 as the due date for comments, and that the application raises novel questions requiring careful study.

Aloha and Hawaiian filed a joint reply on August 23 opposing Pacific Wings' request. They state that they were not required to serve any airline and as a matter of courtesy chose to serve several airlines that were unlikely to have been aware of the discussions

between Hawaiian and Aloha and the review of the agreement by the Governor of Hawaii. The applicants assert that Pacific Wings was aware of the discussions and the Governor's approval of the agreement, since these matters were reported in the Hawaii newspapers. They cite a newspaper article that quoted comments from Pacific Wings' president on the applicants' agreement. Aloha and Hawaiian further claim that the agreement will have little impact on Pacific Wings, which serves only one market covered by the agreement.

We will grant Pacific Wings' request in part. As we stated in our notice, the normal comment period in this proceeding would have been twenty-one days. Pacific Wings may have a legitimate need for more time for analyzing the application. The applicants, moreover, did not serve Pacific Wings, even though it is the only other airline providing scheduled airline service in intra-Hawaiian markets. We will therefore make comments on the application due at 10 a.m. EDT on Tuesday, September 3. We are unwilling to grant Pacific Wings more time due to our need to make a decision on the application by October 1.

ACCORDINGLY:

1. Comments must be filed by 10 a.m., September 3, 2002.

By:

READ C. VAN DE WATER
Assistant Secretary for Aviation
and International Affairs

Dated: August 27, 2002

(SEAL)

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